IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION No.1461 of 2001

IN

REGULAR CIVIL SUIT NO. 44 OF 1996

Shashikant Janardan Gharat .. Petitioner

versus

Shantaram Shankar Gharat & ors. .. Respondents

...

Ms.Gauri Godse for the petitioner.

Mrs.Smita Shetkar for the respondent nos.1 to 9/1.

CORAM : B.H. MARLLAPALLE,J

DATED : 16th August 2005.

P.C.:

1. An application at Exhibit-99 came to be filed by defendant no.8 on or about 2nd July 2001 praying for dismissal of the suit under Order VII Rule 11 of the Code of Civil Procedure on the ground that on the day the suit was filed, the defendant no.8 was not alive and thus, the suit was filed against the dead person. The applicant was one of the legal representatives of the deceased defendant

no.8.

2. By taking into consideration the say filed by the plaintiff, learned Judge of the trial Court rejected this application on 27th July 2001 and the same order is assailed in this Civil Revision Application. Regular Civil Suit no.44 of 1996 was filed on or about 1st March 1996 against 10 defendants for partition of joint property which was owned by defendant nos.1 to 9 and the plaintiff is the niece of defendant nos.8,, 9 and 10 and sister of defendant nos.1 to 7.

3. On 24th April 1997,, an application was presented by the plaintiff for bringing the legal representatives of the defendant and the trial court called upon the defendants to file the say. By an order dated 11th August 1997, the plaintiff was directed to produce the documents disclosing the date and place of death of defendant no.8 and finally by an order dated 9th November 1998, this application at Exhibit-44 came to be allowed for bringing on record the three legal representatives i.e. defendant no.8/1, 8/2 and 8/3 on record in place of defendant no.8.

4. Three years later i.e. on or about 6th March 2001, this application at Exhibit-99 came to be filed and before the same was presented in the trial court, the legal representatives of the deceased defendant had already appeared and filed written statement. At no point of time, any such objection was raised. The suit was for partition of the joint property held by the defendants and it was not a case where the property sought to be partitioned was held only by the deceased defendant no.8. When the suit was filed for partition of the joint property of several defendants, the demise of one of them even prior to the date of the filing of the suit could not be fatal to the suit and therefore, the application filed under Order VII Rule 11 of the Code of Civil Procedure was rejected. It was not a suit against a solitary defendant who was not alive when the suit was filed.

5. The reasons given by the trial court therefore cannot be termed as illegal or perverse and hence, this revision must fail. Civil Revision Application is rejected summarily.

B.H. MARLAPALLE, J